

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No.: 2:24-cr-00200-JAD-EJY

Barry Rashad Harris,

Defendant

v.

State of Nevada,

Plaintiff

**Order Remanding State Criminal
Prosecution under 28 U.S.C. § 1455,
Denying Motion to Proceed In Forma
Pauperis, and Closing Case**

[ECF No. 2]

Barry Rashad Harris is a criminal defendant in a pending state-court case in the Las Vegas Township Justice Court and is currently awaiting trial on one felony count of “battery by prisoner.”¹ He is incarcerated at High Desert State Prison following a 2018 conviction for first-degree kidnapping.² In August 2024, Harris initiated this action by filing a “notice of removal” under 28 U.S.C. § 1455 and Federal Rule of Civil Procedure 11.³ The case was opened as a civil-rights action, but because § 1455 governs the procedure for removal of a state criminal case to federal court, I closed Harris’s civil case and reopened it as a criminal one.⁴ I now assess whether Harris properly invokes § 1455’s removal power, find that he does not, and remand this case back to state court.

¹ See *State of Nevada v. Harris*, Case No. 23-CR-057068 (Las Vegas Justice Township Court). I take judicial notice of the public docket in Harris’s state-court case, which can be found through the criminal-case search at lasvegasjusticecourt.us.

² I also take judicial notice of Harris’s inmate records, available through the Nevada Department of Corrections’ website.

³ ECF No. 1-1.

⁴ ECF No. 3 in *Harris v. State of Nevada*, Case No. 2:24-cv-01533-JAD-EJY (D. Nev).

1 **A. Harris’s removal notice isn’t timely.**

2 Section 1455 permits a defendant “desiring to remove any criminal prosecution from a
3 [s]tate court” to “file in the district court of the United States for the district and division within
4 which such prosecution is pending a notice of removal signed [in accordance with] Rule 11 of
5 the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds
6 for removal, together with a copy of all process, pleadings, and orders served upon such
7 defendant” in the state action.⁵ That removal notice must be filed “not later than 30 days after
8 the arraignment in the [s]tate court, or at any time before trial, whichever is earlier, except that
9 for good cause shown the United States district court may enter an order granting the defendant .
10 . . leave to file the notice at a later time.”⁶ The statute directs the United States district court to
11 “examine the notice promptly” and summarily remand the case “[i]f it clearly appears on the face
12 of the notice and any exhibits” attached “that removal should not be permitted.”⁷

13 Harris’s state-court records reflect that he had his initial appearance and arraignment on
14 September 6, 2023. His case was temporarily “bound over” to the Eighth Judicial District Court
15 for a competency evaluation and was eventually remanded to the justice court for further
16 proceedings. Harris is currently awaiting his preliminary hearing, which is set for October 14,
17 2024.⁸ Under § 1455, Harris should have filed this notice of removal 30 days after his
18 arraignment, which occurred almost a year ago. And Harris doesn’t present any circumstances
19 that would constitute good cause for his delay in removing this case.

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22 ⁵ 28 U.S.C. § 1455(a).

23 ⁶ *Id.* at § 1455(b)(1).

⁷ *Id.* at § 1455(b)(4).

⁸ *See State of Nevada v. Harris*, Case No. 23-CR-057068.

1 **B. Harris doesn't satisfy any statutory grounds for removal.**

2 Even if Harris timely filed his notice of removal, he identifies no statutory grounds
 3 supporting his ability to remove this state-court prosecution to federal court. Section 1455
 4 merely establishes the procedure to remove a criminal case from state court. In addition to
 5 complying with that section's procedural requirements, Harris must also show that he meets one
 6 of the statutory grounds for removal. The only possible statutory hook for Harris appears to be
 7 § 1443, which permits removal of a state criminal prosecution that is pending "against any
 8 person who is denied or cannot enforce in [state court] a right under any law providing for the
 9 equal civil rights of citizens of the United States . . . for any act under color of authority derived
 10 from any law providing for equal rights, or for refusing to do any act on the ground that it would
 11 be inconsistent with this law."⁹

12 This is a narrow statute that permits removal only if "the right allegedly denied the
 13 removal petitioner arises under a federal law providing for specific civil rights stated in terms of
 14 racial equality."¹⁰ "Bad experiences with the particular court in question will not suffice."¹¹ Nor
 15 will general allegations that the state court violated the defendant's due-process rights or "that
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20 ⁹ 28 U.S.C. § 1443(1)–(2). The other options, §§ 1442 and 1442(a), apply only to actions against
 21 officers of the United States and members of the armed forces if the criminal charges are related
 22 to their official duties. Harris has not identified himself as an officer of the United States or a
 soldier, and even if he did, his charge of battery against a prison official clearly doesn't fall
 within the "official duties" of any such officer. So I focus only on the potential applicability of
 § 1443.

23 ¹⁰ *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975).

¹¹ *California v. Sandoval*, 434 F.2d 635, 636 (9th Cir. 1970) (per curiam) (cleaned up).

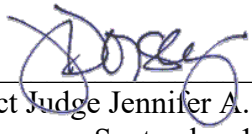
1 the defendant is unable to obtain a fair trial in a particular state court.”¹² Instead, “the denial of a
2 [defendant’s] equal civil rights must be ‘manifest in a formal expression of state law.’”¹³

3 Harris alleges in his removal notice that state court is not the proper venue to “address
4 commercial law” that he believes is part of his criminal case, and argues that he is being “treated
5 . . . unfairly in the lower state court” in violation of his due-process rights.¹⁴ He also contends
6 that his Sixth Amendment “right to self-representation [was] taken away from him.”¹⁵ None of
7 these allegations support removal under § 1443 or any other statute. That Harris believes he is
8 being treated unfairly or that the state court is not applying the law he believes it should apply
9 does not show that a state law has denied him a specific right meant to ensure racial equality. So
10 I summarily remand this case back to state court under § 1455(b)(4).

11 Conclusion

12 IT IS THEREFORE ORDERED that **this case is REMANDED to state court.** The
13 Clerk of Court is directed to send a copy of this order to the Las Vegas Township Justice Court,
14 with reference to Case No: 23-CR-057068, and **CLOSE THIS CASE.**

15 IT IS FURTHER ORDERED that Harris’s motion to proceed in forma pauperis [ECF
16 No. 2] is **DENIED as moot.**

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18 
19 U.S. District Judge Jennifer A. Dorsey
20 September 16, 2024

21 ¹² *City of Greenwood v. Peacock*, 384 U.S. 808, 827 (1966).

22 ¹³ *Inland Valley Dev. Agency v. Patel*, 116 F. App’x 98, at *1 (9th Cir. 2004) (quoting *Georgia v. Rachel*, 384 U.S. 780, 803 (1966)).

23 ¹⁴ ECF No. 1-1 at 2–3.

¹⁵ *Id.* at 4.